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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

John Hayden and Paul Ostrow

Plaintiffs,

vs.

The City of Minneapolis, The Minneapolis Park and Recreation Board, Minnesota Vikings Football Club, and Minnesota Vikings Football Stadium, LLC,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

File No. 27-CV-17-16643
Judge Bruce A. Peterson

The above-entitled matter came before the Honorable Bruce A. Peterson on October 5, 2018, for a hearing on Plaintiffs' Motion for Summary Judgment on Count 1 of the Complaint, and the Defendant City of Minneapolis's Motion for Summary Judgment dismissing Count 1. At the hearing, John Hayden and Paul Ostrow appeared *pro se*. Attorney Sarah McLaren appeared on behalf of the City of Minneapolis. Attorney Ann Walther appeared on behalf of the Minneapolis Park and Recreation Board. Based on the hearing, the submission of the parties, and the files and records in the case, the Court makes the following:

ORDER

1. The Plaintiffs' Motion for Summary Judgment on Count 1 of the Complaint is **GRANTED**.

2. The Motion of the City of Minneapolis for Summary Judgment dismissing Count 1 is **DENIED**.

3. The Plaintiffs have submitted a proposed injunction that exceeds the relief sought in Count 1 of their Complaint. Within 10 days of the date of this Order, the Plaintiffs may submit a proposed injunction consistent with this opinion. Within 10 days thereafter, the Defendants may submit comments or an alternative proposal. Thereafter the Court will notify the parties if a hearing or telephone conference is necessary.

4. The attached Memorandum is incorporated into this Order.

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Dated: December 31, 2018

BY THE COURT:

Bruce A. Peterson
Judge of the District Court

MEMORANDUM

I. INTRODUCTION

In this case the citizen-Plaintiffs challenge the authority of the City of Minneapolis ("City") to manage the park outside U.S. Bank Stadium known as the Commons.[1] The current matters before the Court are the parties' second round of dispositive motions. In an order dated May 23, 2018, resolving the first set of motions, the Court dismissed all of Plaintiffs' claims but one. *John Hayden v. City of Minneapolis et. al*, "Order Granting and Denying Summary Judgment in Part, Granting and Denying Judgment on the Pleadings in Part, and Denying Motion to Amend Complaint" No. 27-CV- 17-16643 (Hennepin County Dist. Ct. May 23, 2018). Specifically, the Court dismissed Count Two of Plaintiffs' Complaint, in which they challenged the Urban Park Use Agreement and the Memorandum of Understanding underlying the Commons, because the Plaintiffs lacked particularized injury from those agreements and thus lacked standing to sue. The Court also denied as premature Plaintiffs' request to add a Count Three to their Complaint challenging the City's authority to issue the bonds used to finance the Commons. The Court also dismissed the Minnesota Vikings and the Minnesota Sports Facilities Authority from the case, because they were named only in Count Two. The court declined to dismiss Count One of the Complaint, however, which challenges the City's authority to spend money on the Commons, because the Minneapolis Charter clearly grants authority to manage parks only to the Minneapolis Park and Recreation Board ("MPRB") and the Charter expressly excludes the City Council from doing so.

The first set of motions was based on the pleadings only. In the current summary judgment motions, the parties have had the chance to present documentary evidence. The Plaintiffs, obviously perceptive readers of court orders, move for judgment against the City on the same grounds set forth in the May 23 order. For its part, the City takes another stab at eliminating

[1] For the purpose of this Motion, the City does not contest Plaintiffs' assertion that the Commons is a "park". Defendant City of Minneapolis' Mem. in Supp. of its Mot. for Summ. J. at 16, fn 1.

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Count One by offering a range of factual documents. However, none of them seriously undermine the unavoidable conclusion that the City Council has no authority under the Charter to manage parks. Thus, this second dispositive motion by the City has also been denied in this Order, and the Plaintiffs' motion has been granted. This effectively ends this case, except to determine the precise wording of the injunction curtailing the City's role in the Commons.

II. UNDISPUTED FACTS

The underlying facts are fully set forth in the Court's order dated May 23, 2018. The gist of the matter is that the City sold the Commons to the MPRB for $1, and on January 1, 2017, the MBRB leased it back to the City to operate and manage. Plaintiffs assert that because the City lacks authority to operate, develop, or maintain a park like the Commons, the City necessarily lacks authority to spend any money operating the Commons.

The parties have now presented a variety of factual materials in support of their present motions. The City's materials document the early state legislation granting powers to the City of Minneapolis, the history of the Minneapolis City Charter and the 2013 enactment by the voters of the current version of the Charter, along with some of the history of the MPRB. Third McLaren Decl., Ex. 1-11, filed Sept. 7, 2018. The City had previously presented evidence of some of the historical partnerships between the City and the MPRB. The Plaintiffs have presented only a transcript of the 2013 hearing in which a several citizens, including one of the Plaintiffs here, unsuccessfully sought a temporary restraining order to stop the development of the Commons. *Woodruff et al v. City of Minneapolis et al*, No. 27-CV-13-21254 (Hennepin County Dist. Ct. dated December 13, 2013.) Neither party appears to challenge the other's documentary evidence, so all the evidence in the record can be deemed undisputed.

A. SUMMARY JUDGMENT STANDARD OF REVIEW

The standard for summary judgment is set forth in Minnesota Rule of Civil Procedure 56.01: "The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." The district court's function on a motion for summary judgment is not to decide issues of fact or weigh the evidence, but solely to determine whether genuine factual issues exist. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). In deciding summary judgment motions, "[t]he evidence [must be] construed in the light most favorable to the party opposing summary judgment." *J.E.B. v. Danks*, 785 N.W.2d 741, 747 (Minn. 2010). "The party moving for summary judgment has the burden to

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show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364 (Minn. 2009) (citing *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 897 (Minn. 1996)).

To raise a genuine issue of material fact, "the nonmoving party must present more than evidence 'which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.'" *Valspar Refinish, Inc.*, 764 N.W.2d at 364. (quoting *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997)). "[M]ere allegations [are insufficient] to survive summary judgment." *DLH, Inc.*, 566 N.W.2d at 71.

III. ANANLYSIS

The Plaintiffs seek summary judgment on the same grounds laid out in the Court's May 23 order, where the Court said: "Section 4.1 of the Charter states: 'The [City] Council may act on the City's behalf in any matter, *except where – (1) this charter reserves the action for a different board*, commission, or committee; . . . .' This section prohibits the City from operating a park because the Charter has unambiguously granted plenary authority over the parks in Minneapolis to the MPRB. Section 6.2 states, '(1) Charter Powers. The Board establishes governs, administers, and maintains . . . (A) the parks . . . in and adjacent to the City; . . . .' *John Hayden v. City of Minneapolis et. al,* "Order Granting and Denying Summary Judgment in Part, Granting and Denying Judgment on the Pleadings in Part, and Denying Motion to Amend Complaint" at 16, No. 27-CV- 17-16643 (Hennepin County Dist. Ct. May 23, 2018).

Challenging this conclusion, the City has now raised a new argument that did not appear in its first motion to dismiss Count 1. This argument is that the current Charter is just a restatement from 2013 of the original Minneapolis Charter, so the new Charter must be interpreted in light of practices under the original Charter. The City believes that historical partnerships between the City and the MPRB support its role in the Commons. This argument would have merit, except the Plaintiffs have presented a persuasive historical analysis of the change in charters that negates the City's lease of the Commons.

To begin with, the parties and the record are clear that the new Charter was not intended to make substantive changes to the original Charter. The ballot provision that was overwhelmingly approved by the voters in 2013 stated that the revision would modernize the charter, redraft provisions for brevity and in plain language, group related provisions into nine articles, and

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remove certain provisions for possible enactment into ordinances. Third McLaren Decl., Ex. 7, filed Sept. 7, 2018. Most important here, the ballot provision said the new Charter would "retain the current role and relationships of City Boards and Commissions." *Id*. In accord with this description, Section 1.2(b) of the new Charter states that the new Charter supersedes the original charter, "But except as this charter or an amendment explicitly provides otherwise, this charter does not affect…the powers or duties of any…public body…" The new Charter's instructions on how it should be interpreted state that "settled interpretation" of any term or provision of the original Charter is valid to the extent the term or provision is carried forward into the new charter. Charter § 1.3(d) 4.

All this seems relatively straightforward. The wrinkle is that despite this limited function of the new Charter, the language in Section 4.1 of the new Charter expressly subtracting from the City Council's broad authority of any powers reserved to an independent board like the MPRB is found nowhere in the old Charter. Moreover, the City points out several examples of how the City and the MPRB worked together under the original Charter. For example, an agreement between the City and the MPRB in 1999 provided for the City to plow snow on parkways and maintain the street lights and sewer systems in the parks, while the MPRB would maintain all the trees on City property. McLaren Decl., Ex. 22, filed on February 21, 2018. And another agreement in 2011 provided for the City to build and maintain the 35W Bridge Memorial on MPRB property. Id. Ex. 23. The City logically argues that since the new Charter did not change the fundamental relationships set forth in the original Charter, these kind of partnerships should still be permitted under the new Charter.

Plaintiffs, however, provide the missing explanation for the appearance of the "reserves" language in Section 4.1 for the first time in the new Charter. The old Charter was one of express powers. As Plaintiffs point out, the original Charter goes on for many sections authorizing specific activities like regulating the size and weight of bread and establishing the minimum requirements for stables and barns. Pl.'s Supplemental Brief at 2. In modernizing the original Chartre and shortening it by two-thirds, the new Charter eliminated these specific grants of authority to the City and replaced them with plenary power: "The City…may exercise any power that a municipal corporation can lawfully exercise at common law. " Charter § 1.4 (a).

This change in the City's authority from express to plenary required the "reserves" language of Section 4.1. Under the original Charter, the City council was not granted express authority to

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manage the parks. Rather, this was granted to the Park and Recreation Board:

> The Park and Recreation Board of the City of Minneapolis and its successors shall have the power and it shall be its duty to devise, adopt and maintain parks and parkways in and adjacent to the City of Minneapolis, and from time to time to add thereto; to designate lands and grounds to be used and appropriated for such purpose; to cause the same to be platted, surveyed, and plats thereof filed in the office of the Secretary of said Board, and in the office of the Department of Public Works of the City of Minneapolis; and the right to take possession upon obtaining title to the same or any part thereof, to hold, improve, govern and administer the same for such purposes.

Third McLaren Decl., Ex. 6 at 234, filed September 7, 2018. With its new plenary authority under the new Charter, the City council would therefore have gained new authority over the parks unless it was explicitly walled off from the MPRB's domain. Thus, the new "reserves" language does not establish a new limitation on the City Council but maintains its existing relationship with the MPRB and other independent boards.

The City does not provide an explanation of how the new "reserves" language leaves the City with authority to perform functions expressly reserved to independent boards. The City attempts to derive this authority from the MPRB itself. The City argues that because the MPRB has authority to delegate park management, with appropriate safeguards, (as found in the Court's May 23 order), and because the MPRB approved the delegation of the operation of the Commons to the City, by accepting the delegation the City cannot have engaged in an action reserved by the Charter to the MPRB.[2]

This argument is flawed. The precise question presented by the City is whether managing a park pursuant to a lease with the MPRB is still a "matter…reserve[ed] … for the [MPRB]" and therefor off-limits to the City. The answer depends on the nature of the lease. The Lease for the Commons says the City is "authorized to operate and manage" the Commons. And the plain language of the Charter answers the question about this particular lease: Section 6.2 says "The [MPRB] establishes, governs, administers, and maintains… (A) the parks…" To "operate and manage" a park is functionally equivalent to administering and maintaining a park, so the City's role under this Lease is still a function reserved to the MPRB and therefore the City cannot do it. If the Lease authorized the City to do something short of operating and managing the park, the

[2] As the City puts it, "If the Park Board, as this Court has ruled, had the lawful authority under the Charter to delegate as set out in the agreement, then the act of accepting that delegation, through the City Council's vote to approve the agreement, cannot by reason of logic constitute an action 'reserved' under the language of the charter to a 'different board or commission.'" City's Mem. in Supp. of Its Mot. for Summ. J. at 20.

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result might be different, but a lease this broad contravenes the Charter.

The City cannot escape two inevitable conclusions that would flow from adopting its position. First, that as long as the MPRB approved, the City Council could establish and maintain a parallel park system. And second, that as long as the other agencies approved, the City Council could also establish and maintain parallel systems now reserved to other independent boards: the Civil Service system, the Civil Rights system, and the tax assessment system. Given the political and financial resources at its disposal which the City Council could focus on these independent city units to encourage their approval--some of which were allegedly exercised in this case--these outcomes are not so farfetched. And they appear to be the very outcomes the Charter is structured to prevent. This case highlights the fact that Minneapolis municipal government is not a free-wheeling political activity, but operates according to clearly stated structural arrangements.

So, then, if the new "reserves" language is a just a restatement of the relationship between the City council and the MPRB under the old Charter, what is the significance of the historical partnerships between the City and the MPRB? They present some interesting questions about the lawful exercise of City authority, and their legality was apparently never challenged or confirmed. But the present issue is easier: these earlier partnerships do not stand for the proposition that the City had an accepted historical practice of doing what is challenged here—taking over the operation and management of a park. Plowing snow or maintaining street lights and sewers is not managing parks. Nor is the 35W Bridge Memorial a park. It appears to consist of a "Remembrance Garden" and a river overlook. It has a different purpose from a park. As the City puts it, "The City established this memorial to recognize the I-35W Bridge collapse… The April 1, 2011 license agreement between the MPRB and the City grants the City the right "to build, place and maintain the Memorial" on MPRB property, not to manage a park. McLaren Decl., Ex. 23 at 1, filed Feb. 21, 2018.

This would be a closer case if the City had contracted to maintain the lights or the sewers on the Commons or to build and maintain a memorial on it rather than leasing the entire park to operate and manage. But that was not done here, and maintaining sewers or a memorial does not provide precedent for managing a park. These activities pose none of the important challenges presented in park management—making choices about usage and programming, establishing

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priorities and allocating limited resources, and ensuring equal accessibility.[3]

In response to the Court's request at the hearing of this matter, the City submitted a case that directly bears on this issue. In *Evans v. St. Paul*, 2 N.W.2d 35 (Minn. 1942), the Minnesota Supreme Court ruled in favor of the City of St. Paul as to how it paid a disabled firefighter. The Supreme Court noted that the procedure used in that case was a longstanding practice that had worked well. The Court considered this history in interpreting the relevant statute, observing, "[i]mportant, too, is administrative interpretation tested by many years of practical and satisfactory experience." Id. at 39. Exactly. And this would be a different case if the MPRB had a longstanding historical practice of leasing parks to the City to operate and manage. Apparently, however, there are no such examples.

The City's second principal argument is that that Minn. Stat. § 471.15 grants it authority to fund and operate park facilities. City's Mem. in Supp. of its Mot. for Summ J. at 3. This statute says, "Any home rule charter or statutory city or any town, county, school district, or any board thereof. . .may operate a program of public recreation and playgrounds; acquire, equip, and maintain land, buildings, or other recreational facilities. . . and expend funds for the operation of such program. . ." But while this statute authorizes certain conduct by cities, it says nothing about how a city organizes itself to do so. The MPRB is a part of the City, and it operates the City's recreational facilities. The Plaintiffs' position that the City's own Charter assigns this function to the MPRB and not the City council in no way interferes with the City's statutory authority to manage its own parks.

Finally the MPRB focuses on a companion statue, Minn. Stat.§ 471.16, subd. 1, which says, "Any city, however organized, or any town, county, school district, or any board thereof may operate such a program independently, or they may cooperate among themselves or with any nonprofit organization in its conduct and in any manner in which they may mutually agree;" MPRB's Mem. in Supp. of City's Mot. for Summ. J. at 3. The MPRB complains that barring the City from operating the Commons contradicts this statutory authority for the MPRB to cooperate with other entities. *Id.* But such legislation cannot authorize the MPRB to partner with another entity that has no authority to enter into such a partnership. A non-profit agency whose articles or non-profit purpose did not provide for managing a park would be in the same position as the City

[3] For example, in 2016 the MPRB established a criteria based system for park projects "with a focus on racial and economic equity." MPRB Resolution 2016-223.

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here and could not partner with the MPRB to matter how much the MPRB wanted to do so. Under the Minneapolis Charter, the City Council is not a partner available to the MPRB to manage its parks.

IV. CONCLUSION

The Minneapolis City Charter functions as a kind of constitution for the City. The function of constitutions and charters is to establish government structures, allocate authority between them, and define and limit the powers of the different parts of a government. The theory underlying charters and constitutions is that in the long run it is better to protect certain fundamental aspects of government from manipulations that might be politically popular at any given time. The Court has been told that Minneapolis has the finest park system in the country, so it would appear that the Charter's allocation of responsibility between the MPRB and the City council has been a resounding success. Nothing has been presented here to change that division of labor.

In sum, the Plaintiffs' motion for summary judgment should be granted and the City's denied. The City lacks authority to operate and manage the Commons, and therefore it lacks authority to spend money to do so. Plaintiffs are entitled to an appropriate injunction.

/BAP